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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/724,816	12/01/2003	Thomas L. Clubb	EV31030US	5558
9561 7590 10/15/2007 POPOVICH, WILES & O'CONNELL, PA 650 THIRD AVENUE SOUTH SUITE 600 MINNEAPOLIS, MN 55402			EXAMINER MACNEILL, ELIZABETH	
			ART UNIT 3767	PAPER NUMBER
			MAIL DATE 10/15/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/724,816

Applicant(s)

CLUBB, THOMAS L.

Examiner

Elizabeth R. MacNeill

Art Unit

3767

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 October 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-75 is/are pending in the application.
- 4a) Of the above claim(s) 7-11, 30-32, 34, 39-41, 44, 54-58, 66-68, 70 and 73-75 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6, 12-29, 33, 35-38, 42, 43, 45-53, 59-65, 69, 71 and 72 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application
- ☐ Other: _____

DETAILED ACTION

Election/Restrictions

1. Claims 7-11, 30-32,34, 39-41,44,54-58,66-68,70 and 73-75 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 3 August 2006.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-6,12-29,33,35-38,42-43,45-53,59-65,69, and 71-72 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shanley et al (US 6,209,673) in view of Fogarty (US 4,774,949)

Shanley teaches a catheter with a first elongate tubular body (72), a second elongate tubular body (14), an elongate member (76), and a third elongate tubular body (52). See Fig 9 and 10. (Note: in the drawings the third body is indicated as 54 but in the description as 52. Based on the description and comparison to the other embodiments, the examiner believes that the drawings are mislabeled).

Shanley does not teach that the third body has a lumen with proximal and distal openings.

Fogarty teaches a catheter for use in a branched vessel with a supporting wire (36) which has a lumen and proximal and distal openings (in order to inflate the balloon 40, Fig 5).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to use a third body with a lumen and proximal and distal openings as taught by Fogarty in order to better secure the catheter device at the branched vessel during a surgical procedure.

As to claim 2,37, (30) acts as a mechanical stop; claims 3-6,12,14-17,35,38,59,61-65,69,71 Figs 9 and 10; claims 29,33, Fig 7; claim 45-53, guidewire (50), Figs 4-8.

As to claims 18-28, Shanley is silent on the specific dimensions of the catheter.

Shanley's catheter is sized and shaped to be used in the human vasculature, and therefore must fall within certain anatomical limitations. It would have been well within the skill of one of ordinary skill in the art at the time the invention was made to use the dimensions claimed by the applicant as a matter of obvious design choice to allow the catheter to be used within the human vasculature.

As to claims 13 and 60, Fogarty teaches that the second elongate member has an inner diameter which increases rather than decreases from the proximal end to the distal end.

It would have been obvious to one of ordinary skill in the art at the time the invention was made reverse the orientation of the second member, as one would expect the device to perform equally well since no reason is given for or against either orientation.

Response to Arguments

4. Applicant's arguments with respect to claims 1-75 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Elizabeth R. MacNeill whose telephone number is (571)-272-9970. The examiner can normally be reached on 9:00-5:30 M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Sirmons can be reached on (571) 272-4965. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

ERM



KEVIN C. SIRMONS
SUPERVISORY PATENT EXAMINER

